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January 19, 2018

Interim Chief Kelly Brown
City of Brawley
351 Main Street
Brawley, California 92227

Re: Brawley Police Department Officer Involved Shooting of [REDACTED] Incident Report #161219004, Imperial County District Attorney Bureau of Investigation Case No. C16-096; Deputy District Attorneys assigned: Laura Keenan and Michael Domenzain

Dear Chief Brown:

We have reviewed the reports and other materials compiled by your agency and investigators from the Imperial County District Attorney's Office Bureau of Investigations concerning the officer involved shooting of Mr. [REDACTED] on December 19, 2016.

Summary

On December 19, 2016, Brawley Police Officers were dispatched to [REDACTED] Brawley, California in reference to a domestic dispute involving a male subject, later identified as [REDACTED]. While the officers were negotiating with Mr. [REDACTED] and attempting to place him on a hold under California Welfare and Institutions Code section 5150, Mr. [REDACTED] swung a knife at the officers. In response, Agent [REDACTED] deployed his Taser. The Taser seemingly had no effect on Mr. [REDACTED] and he again came at the officers with a knife. Officer [REDACTED] and Officer [REDACTED] then fired shots at Mr. [REDACTED]. Mr. Pimentel later died at the hospital due to multiple gunshot wounds.

The Imperial County District Attorney's Office (ICDA) Bureau of Investigation conducted an investigation into the events leading up to and surrounding both the domestic dispute and Mr. [REDACTED]'s death. Upon completing the investigation, ICDA Investigators submitted written reports to the District Attorney for review.

Persons Involved

Mr. [REDACTED] was 25 years old at the time of the incident and lived in Brawley, California.

Agent [REDACTED] had been employed as a police officer with the City of Brawley, California for approximately two years at the time of the incident. On December 19, 2016, he was driving a marked black-and-white patrol vehicle. Agent [REDACTED] was wearing a standard issue Brawley Police Department uniform complete with gear and utility belt.

Agent [REDACTED] had been a police officer with the City of Brawley, California for approximately eight months at the time of the incident. On December 19, 2016, he was driving a marked black-and-white patrol vehicle and was wearing a standard issue Brawley Police Department uniform complete with gear and utility belt.

Agent [REDACTED] had been a police officer with the City of Brawley for approximately two years at the time of the incident. On December 19, 2016, he was driving a marked black and white patrol vehicle and wearing a standard issue Brawley Police Department Uniform complete with gear and utility belt.

Sergeant [REDACTED] had been a police officer with the City of Brawley for approximately eight years at the time of the incident. On December 19, 2016, he was driving a marked black and white patrol vehicle and wearing a standard issue Brawley Police Department Uniform complete with gear and utility belt.

Factual Summary

November 6, 2016 Incident

On November 6, 2016, at approximately 09:03 a.m., Officers from the Brawley Police Department (herein, BPD) received a dispatch call in reference to a domestic dispute occurring at a residence near the [REDACTED] in the City of Brawley. The information provided to the officers was that [REDACTED] stated that he was in a dispute with his girlfriend, [REDACTED]. According to dispatch Mr. [REDACTED] also stated that he was armed with a loaded firearm, and that he intended to hurt himself. Officers [REDACTED], [REDACTED], [REDACTED], and [REDACTED] responded to the scene.

Upon arrival officers noted the residence appeared to have two exterior doors, one door facing west and the other facing south. The west side of the residence was connected to a front house, which appeared to be a different residence that was uninvolved in the call officers had received. Officers formed a safety perimeter around the alley of the residence. Officer [REDACTED] then announced out loud for Mr. [REDACTED] to come outside with his hands up. Officer [REDACTED] states in his report that his reason for doing so was that based on the information he received it was believed that [REDACTED] was armed and dangerous. After a few minutes of giving

repeated call outs with no response from the residence, Ms. [REDACTED] exited with two small children from the south side facing door of the residence.

Officers continued to make call outs to the residence with no response from Mr. [REDACTED] until approximately 09:14 a.m. At that time Mr. [REDACTED] partially exited from the south door of the residence. Officer [REDACTED] noted that only half of his body was exposed, and officers repeatedly gave commands for [REDACTED] to keep his hands in the air and exit slowly. Instead, Mr. [REDACTED] repeatedly reached into his waist band area and began to partially lift his shirt. Officers repeatedly told Mr. [REDACTED] not to place his hands in his waist band, and that he could be shot if he persisted. Mr. [REDACTED] then told officers that he would not comply and asked officers to shoot him. Mr. [REDACTED] then ran back inside of the residence. Due to the nature of the call and the possession of firearms by Mr. [REDACTED] additional resources were requested including a K-9, Special Emergency Response Team, and additional personnel from the Imperial County Sheriff's Office (herein, ICSO).

During the time that additional personnel began to respond, Officer [REDACTED] told Officer [REDACTED] that he could hear Mr. [REDACTED] having a phone conversation with what he believed may have been family members, and that Mr. [REDACTED] was saying his goodbyes and telling them that he loved them. At approximately 09:26 a.m. Mr. [REDACTED] again appeared in the south side doorway and was partially on a stoop attached to the residence. Officer [REDACTED] attempted to deploy his Taser on Mr. [REDACTED] at this time. Officer [REDACTED] noted that only one dart appeared to penetrate Mr. [REDACTED] in the left shoulder, and that the Taser appeared to have no effect. Mr. [REDACTED] was again able to run inside of the residence.

An ICSO negotiator was dispatched to the scene and surrounding homes and roadways were vacated or cordoned off due to the potential danger of a firearm being used by Mr. [REDACTED]. Deputies from the ICSO spoke with Mr. [REDACTED] for approximately one hour and he told the negotiator from the ICSO that he was going to come out of the residence with a firearm. Mr. [REDACTED] then told the negotiator that he was going to throw the firearm out of the window. These statements shifted numerous times throughout the negotiation. At approximately 11:35 a.m. Mr. [REDACTED] finally exited the residence with his hands up and was detained.

Detective [REDACTED] prepared a search warrant which was subsequently authorized by an Imperial County Superior Court Judge and executed on the residence. Officers recovered a 12 gauge shotgun and a .40 caliber semi-automatic pistol from the residence. Approximately 80 rounds of 12 gauge ammunition were also recovered from the home.

Ms. [REDACTED] was interviewed after the detention of Mr. [REDACTED] and stated she had been arguing with Mr. [REDACTED] throughout the night before the incident. Ms. [REDACTED] stated that Mr. [REDACTED] believed she was being unfaithful due to a text

message from a male co-worker Mr. [REDACTED] observed on her phone. Ms. [REDACTED] also stated she believed [REDACTED] was depressed due to the loss of both his father and brother. According to Ms. [REDACTED], at some time during the night Mr. [REDACTED] retrieved the shotgun and she heard him loading shells into the gun. She also saw Mr. [REDACTED] pace back and forth with the shotgun in his arms. Ms. [REDACTED] pleaded with Mr. [REDACTED] to put the gun down for over an hour and he finally put the gun away. Ms. [REDACTED] stated that she never felt threatened, but was concerned about [REDACTED] committing suicide. [REDACTED] refused an emergency protective order.

Mr. [REDACTED] was interviewed at the Brawley Police Department and admitted that he was depressed because he lost several members of his family in a short amount of time, and that he believed [REDACTED] was being flirtatious with another male. Mr. [REDACTED] corroborated [REDACTED]'s statements regarding the shotgun and his actions preceding the barricade event, except that he claimed the shotgun was empty at all times. Mr. [REDACTED] also stated that when he woke up in a bad mood he called the police and was unsure whether he would commit suicide or aim the shotgun towards police in order to force them to fire on him. Mr. [REDACTED] then admitted that after contacting police he loaded the shotgun. Mr. [REDACTED] also stated that at times during the incident he considered racking the shotgun and pointing it at police. He also verified that the two firearms recovered from the residence belonged to him. Based on all of the information and preceding events a 5150 mental health evaluation hold was placed on Mr. [REDACTED]. After being cleared by Mental Health he was released back into the custody of BPD where he was arrested for P.C. 148, P.C. 69, and 417 P.C.

There were several reports from Officer's that detailed the events of November 6, 2016. Officer's [REDACTED], [REDACTED], [REDACTED] and [REDACTED]'s reports in relation to the November 6, 2016 incident are all consistent with Officer [REDACTED]'s report in their observations and overall synopsis of the events that transpired.

December 10, 2016 Incident

On December 10, 2016, the Brawley Police Department was again contacted in reference to a suicidal subject. Officer [REDACTED] responded to the residence at [REDACTED] and made contact with Mr. [REDACTED]. Mr. [REDACTED] told Officer [REDACTED] that he was going to take a number of pills in an attempt to commit suicide. Mr. [REDACTED] advised Officer [REDACTED] that he would attempt to take his own life if he was not placed in care of a mental health facility. Based on Officer [REDACTED]'s prior knowledge of Mr. [REDACTED] as well as his statements about committing suicide, [REDACTED] was taken in for another 5150 evaluation.¹

¹ Officer [REDACTED] prepared a DHCS form 1801 (Application for Assessment...and Crisis Intervention or Placement) in reference to this contact.

While transporting Mr. [REDACTED] Officer [REDACTED] attempted to hold a conversation with him about his mental state. Mr. [REDACTED] reminded Officer [REDACTED] about the November incident, and told Officer [REDACTED] that he would have made sure that Officers discharged their weapons on him if Officers refused to shoot.

December 19, 2016 Incident

On December 19, 2016, at approximately 7:21 a.m., the Brawley Police Department received a dispatch call referencing a male subject saying he wanted to end his life. Officers [REDACTED], [REDACTED], [REDACTED], and [REDACTED] responded to [REDACTED] in the City of Brawley. The responding officers were familiar with the November incident detailed above.

Upon arrival Officers met at the south door to the residence. Officer [REDACTED] approached the door and knocked, at which time a female subject who officers recognized as [REDACTED] answered the door. [REDACTED] told the officers that [REDACTED] was inside of the home and that he wanted to kill himself. Officer [REDACTED] asked [REDACTED] if she could have [REDACTED] step outside. [REDACTED] returned into the home, and after some time had passed officers noted that she had not returned. Fearing that [REDACTED] might be in danger due to the suicidal tendencies of [REDACTED], the potential for a hostage situation, as well as the prior statements gathered from [REDACTED] and [REDACTED] from the November incident, officers decided to make entry into the home.

Before Officer [REDACTED] had entered the home completely, he heard [REDACTED] state: "take the baby out of here." Officers immediately advanced to a bedroom located in the residence that appeared to be a child's bedroom with a crib inside of it. Upon entering the room Officer [REDACTED] noted that the infant was directly behind [REDACTED] on the floor, and that [REDACTED] was positioned in between the infant and [REDACTED]. Officers noted that [REDACTED] was wearing some clothing, and that he did not appear to have any weapons in his hands or on his person. Fearing that [REDACTED] may push [REDACTED] causing her to fall on the infant, or otherwise go into a violent episode where the infant might have been harmed, Officer [REDACTED] picked up the infant and took the baby into another room. Officer [REDACTED] exited the room a short time later with [REDACTED] and Officer [REDACTED] gave the infant to her. Officer [REDACTED] then returned to the room where Officer's [REDACTED] and [REDACTED] were still with [REDACTED] attempting to calm him down. Officer [REDACTED] stayed with [REDACTED] and the infant in a separate room.

Officer [REDACTED] returned to the room where he noted Officer's [REDACTED] and [REDACTED] were present. When Officer [REDACTED] returned he noted that [REDACTED] continued to be in an agitated state saying: "only she can make it better", that he wanted to "die" and that he "couldn't do it anymore." Officer [REDACTED] then returned to the room where [REDACTED], [REDACTED] and the infant were. A short time after, Officer [REDACTED] exited the room and asked [REDACTED] to return because [REDACTED] had requested to speak with

Officer [REDACTED]. When Officer [REDACTED] re-entered the bedroom he attempted to calm [REDACTED] down by discussing mental health options with him. [REDACTED] repeatedly stated that [REDACTED] was "the only one who can fix it."

Because of the prior contact with [REDACTED] and his suicidal state, Officer [REDACTED] asked [REDACTED] to place his hands behind his back, so that officers could take [REDACTED] in on a 5150 mental health evaluation hold. [REDACTED] told Officer [REDACTED] that he was, "going nowhere." [REDACTED] continued to tell the officers that only [REDACTED] could help him. [REDACTED] then began to call out to [REDACTED], but because officers were concerned for her safety they did not let her re-enter the room. Officer [REDACTED] then made a second request for [REDACTED] to place his hands behind his back. Officer [REDACTED] told [REDACTED] that he just wanted to take [REDACTED] to get help. [REDACTED] again told the officers that he would not comply. At this time Officer [REDACTED] made a third request for [REDACTED] to place his hands behind his back, while Officer [REDACTED] explained to [REDACTED] that they just wanted to get him help and wanted to secure him due to the suicidal comments he made. [REDACTED] refused to comply at this time as well. Officer [REDACTED] then asked [REDACTED] for the fourth time to comply by placing his hands behind his back. [REDACTED] continued to refuse to comply and then began backing up towards the south east corner of the room. After [REDACTED] began to physically move and refuse commands, Officer [REDACTED] attempted to gain control of [REDACTED] by grabbing his left arm. Simultaneously, Officer [REDACTED] attempted to grab [REDACTED]'s right arm.

Officer [REDACTED] noted that during this time both he and [REDACTED] were in close proximity to [REDACTED]. At this time [REDACTED] was able to break Officer [REDACTED]'s grip, and swung his right arm towards his back area. Officer [REDACTED] could not see exactly where [REDACTED] reached to, but noticed that when [REDACTED] swung his arm back forward he had a knife with a curved blade in his hand. Officer [REDACTED] stated that [REDACTED] swung the blade towards [REDACTED]'s abdomen, and that [REDACTED] was able to block the attack with his hand. Officer [REDACTED] pushed the defendant backwards and while simultaneously retreating yelled out "knife, knife, knife!" At this time Officer [REDACTED] noted that [REDACTED] was in his line of fire and decided to draw his less than lethal Taser. Officer [REDACTED] stated in his interview that he chose to use the Taser because using O.C. spray or a baton would not be safe in that other Officers would be contaminated with the O.C. spray because of the close proximity of everyone in the room, and that the baton would likely strike other officers in the room while being swung. [REDACTED] moved towards the crib and Officer [REDACTED] deployed his Taser striking [REDACTED] in the chest. Officer [REDACTED] heard the Taser cycling, and saw [REDACTED] drop the knife. [REDACTED] then grabbed the prongs and physically removed them from his chest. Officer [REDACTED] noted that this all took place quickly, with his Taser still cycling through its initial five second cycle.

After removing the Taser prongs from his body [REDACTED] picked the knife up again. [REDACTED] again began swinging the knife towards the officers in a slicing motion.

Officer [REDACTED] noted that both he and Officer [REDACTED] were well within range of [REDACTED] striking them which could have seriously injured or killed the officers. At this point both Officers [REDACTED] and [REDACTED] discharged their weapons towards [REDACTED]. After being struck [REDACTED] dropped the knife as he fell to the floor using his right hand to brace himself. Officer [REDACTED] handcuffed [REDACTED] while Officer [REDACTED] made a call out advising shots had been fired, and to request medical assistance. Officer [REDACTED] returned to check on [REDACTED] and the infant and returned to the room once he assured they were unharmed. Officer [REDACTED] was monitoring [REDACTED] and advised he still had a pulse. [REDACTED] was still moving talking and breathing during this time, but Officer [REDACTED] noted that his breathing was appearing to become more difficult. Other police officers from B.P.D. began to arrive including Officer [REDACTED]. Officer [REDACTED] advised Officer [REDACTED] to secure the scene, begin a crime scene log, and to check on nearby residences. At this time medical staff arrived on scene.

Medical personnel began working on [REDACTED] immediately upon arrival and asked Officers to remove the handcuffs. Officers complied and the defendant was transported to Pioneers Memorial Hospital. [REDACTED] underwent emergency left thoracotomy surgical intervention to remove a projectile, but ultimately succumbed to the wounds he received. Medical staff provided the recovered bullet as evidence which was properly logged and is held in evidence.

Coroner's Investigation

An autopsy was performed by Imperial County's Chief Pathologist Dr. Garber. Dr. Garber noted the cause of death as multiple gunshot wounds. Dr. Garber noted a total of 7 gunshot wounds. A total of six bullets were recovered which includes the bullet removed during the left thoracotomy surgical intervention that was performed at Pioneer's Memorial Hospital.

Investigation and Preservation of Evidence

Several items were collected as evidence which included [REDACTED]'s cellular telephone. A search warrant was executed on the cellular telephone on January 20, 2017. A review of the Cellebrite report generated indicated that the user of the phone had queried "How to create a Do Not Resuscitate Order (DNR)" as well as "main arteries in arm" and "main arteries of the body." These queries were on December 17, 2016. Further, on the date of the shooting, information was extracted from [REDACTED]'s phone showing he cancelled future medical appointments using a program known as "the InteliChart Patient Portal."

Interviews were held with Mr. [REDACTED]'s family members. During the interview with Mr. [REDACTED]'s sister, [REDACTED], she noted that Mr. [REDACTED] had been prescribed anti-psychotic medications, and that he would not take the pills as

prescribed. [REDACTED] stated that if Mr. [REDACTED] was taking the medication as prescribed there should have been approximately 21 or 22 pills remaining as of the date of the shooting. D.A. Investigator Jose Cuellar noted during evidence collection that approximately 26 pills remained in [REDACTED]'s prescription for Sertraline.² Inv. Cuellar also noted a prescription for Lorazepam³ was present in the residence, and that it appeared to be prescribed to [REDACTED] as well. The prescription for Lorazepam appeared to have been filled three days prior. The quantity was noted as 10, and a total of 8 pills remained. Cuellar noted the prescription called for two tablets to be taken daily, which should have left approximately four or five tablets left if taken per the instructions.

Legal Analysis

Exigent Circumstances

It is a basic principle under the Fourth Amendment that searches and seizures inside a home without a warrant are presumptively unreasonable. Nevertheless, because the ultimate touchstone of the Fourth Amendment is reasonableness, the warrant requirement is subject to certain exceptions. *Flip v. West Virginia* (1999) 528 U.S. 11, 13. One well recognized exception applies when the exigencies of the situation make the needs of law enforcement so compelling that a warrantless search is objectively reasonable under the Fourth Amendment. *Kentucky v. King* (2011) 563 U.S. 452, 460. One example of an exigent circumstance is warrantless entry onto private property to fight a fire due to the urgency of the situation. *Brigham City v. Stuart* (2006) 547 U.S. 398, 403. "The need to protect or preserve life or avoid serious injury is sufficient justification for what would otherwise be illegal absent an exigency or emergency." *Mincey v. Arizona* (1978) 437 U.S. 385, 392.

An action is reasonable under the Fourth Amendment, regardless of the officer's individual state of mind as long as the circumstances, viewed objectively, justify the action. *Scott v. United States* (1978) 436 U.S. 128, 138. In *People v. Troyer* (2011) 51 Cal. 4th, 599, the California Supreme Court held the invocation of the emergency aid exception to justify a warrantless search only requires an objectively reasonable basis by law enforcement to believe that someone on the premises is in need of immediate aid. *Id.* at 605. The Court in *Troyer* found that the emergency aid doctrine justified the search of the defendant's home by police responding to a dispatch report of shots fired. When the police arrived, they found a wounded male and a wounded female outside of the residence. The Court found that under these circumstances and because the police did not know who the aggressor was, they had

² Sertraline is a prescribed anti-psychotic medication with potential suicidal thoughts as a side effect.

³ Lorazepam is an anti-anxiety medication with potential suicidal thoughts as a side effect.

an objectively reasonable basis to enter the residence to search for additional victims. *Id.* at 608-609.

Application of the emergency aid doctrine makes the officers' warrantless entry into Mr. ██████'s residence on December 19, 2016 reasonable and justified. Just as in *Troyer*, the officers in the instant case had an objectively reasonable basis to enter the residence for the safety of those on the premises. Due to prior contacts with Mr. ██████ in which he possessed weapons and wanted to kill himself, in addition to the information the officers received on December 19, 2016 that Mr. ██████ called 911 and stated that he wanted to kill himself, the officers reasonably believed that someone on the premises was in need of immediate aid. These circumstances, viewed objectively, justified the officers' actions in entering the home without a warrant. *Scott, supra*, at 138. All of the officers were familiar with Mr. ██████ and aware that Mr. ██████ was suicidal. Officer ██████, Agent ██████ and Sergeant ██████ were all present during the incident on November 6, 2016, where Mr. ██████ wanted to commit suicide by cop and barricaded himself in the residence. During this earlier incident, Mr. ██████ made numerous statements that he was going to come out of the house with a shotgun pointed at officers and rack a round so that the officers would shoot him. Two firearms – a twelve (12) gauge shotgun and a semiautomatic firearm – were found in the residence on November 6, 2016. On December 10, 2016, the Brawley Police Department was again called to the residence because Mr. ██████ wanted to kill himself. During that incident, Mr. ██████ made statements to Agent ██████ about wanting to hurt the police officers on scene. Therefore, based on the November 6, 2016 and December 10, 2016 incidents, Mr. ██████'s 911 call about wanting to kill himself, his failure to come out of the residence and the presence of other occupants inside, the officers on scene had reason to believe that on December 19, 2016, Mr. ██████ could have a weapon and was capable of harming himself and others.

In *Michigan v. Fisher* (2009) 558 U.S. 45, in response to a disturbance call about a man "going crazy," a police officer entered the defendant's home without a warrant, which led to the defendant pointing a gun at the officer and his subsequent arrest. *Id.* at 45-46. Before entering the house, officers observed a smashed truck in the driveway and blood on the hood of the truck and one of the doors to the house. *Id.* at 45-46. The Supreme Court held that officers do not need ironclad proof of "a likely serious, life threatening injury to invoke the emergency aid exception. *Id.* at 49. The role of peace officers includes preventing violence and restoring order, not simply rendering first aid to casualties. *Brigham City, supra*, at 406.

The likelihood that rapid action by the officers on scene would prevent injury or death outweighed any privacy interests when they entered Mr. ██████'s home without a warrant on December 19, 2016. Any delay by the officers could have easily made the situation even more dangerous than it already was. When officers arrived at the residence, Ms. ██████ opened the door. When they asked her to

bring Mr. [REDACTED] out, she failed to return. Not knowing whether Ms. [REDACTED] was safe or whether Mr. [REDACTED] had already attempted to kill himself made the situation extremely urgent. If no one was hurt yet, the officers still needed to act fast in order to prevent any injuries. It is clear that Mr. [REDACTED] was not mentally stable and may have had weapons inside the house to hurt others or himself (it was discovered after the entry that Mr. [REDACTED] did in fact have a weapon – a large curved knife). People could well die in emergencies if police tried to act with the calm deliberation associated with the judicial process. *Troyer, supra*, at 606.

Based on the prior incidents with Mr. [REDACTED] and the information that the officers had on December 19, 2016, Officer [REDACTED], Officer [REDACTED], Agent [REDACTED] and Sergeant [REDACTED] were reasonable in entering the residence at [REDACTED] Brawley, California due to exigent circumstances.

Detention Under California Welfare and Institutions Code section 5150

When a person, as a result of a mental health disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer....may, upon probable cause, take or cause to be taken, the person into custody for a period of up to 72 hours for assessment, evaluation, and crises prevention....

California Welfare and Institutions Code section 5150(a).

Under California and Welfare Institutions Code section 5150(a), when a person is a danger to themselves or others, an officer can place them on a 72-hour hold for assessment and evaluation. An officer's determination that a person is a danger to themselves or others must be based on probable cause. *Id.* To constitute probable cause under section 5150, facts must be known to the officer that would lead a person of ordinary care and prudence to believe, or to entertain a strong suspicion, that the person detained is mentally disordered and is a danger to himself or herself. *People v. Triplett* (1983) 144 Cal. App. 3d 283. To justify the detention, the officer must point to "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant his or her belief or suspicion." *Id.* at 541.

Based on all of the facts and circumstances, Officer [REDACTED] had probable cause to detain Mr. [REDACTED] under California Welfare and Institutions Code section 5150. First, Mr. [REDACTED] called 911 and reported that he wanted to kill himself. When the officers arrived at the location, Mr. [REDACTED] would not step outside. When the officers went inside, Agent [REDACTED] heard him state, "Move the baby, I don't wanna hurt the baby. Move the baby, I don't wanna hurt the baby." When speaking with the officers, Mr. [REDACTED] told them, "I can't do it. I just –if I can't have her, ya know what, I just – the better option would be for me just to die." In addition, all of

the officers on scene were familiar with Mr. [REDACTED]. In the recent past, the Brawley Police Department had been dispatched to his residence on two separate occasions due to Mr. [REDACTED] wanting to commit suicide. During the November 6, 2016 incident, Mr. [REDACTED] was armed and was contemplating committing suicide by cop. On December 10, 2016, Mr. [REDACTED] again wanted to commit suicide and relayed to Agent [REDACTED] that on November 6, 2016, he has seriously contemplated pointing a shotgun at officers. All of this taken together amounts to specific and articulable facts that reasonably warranted Officer [REDACTED]'s belief that Mr. [REDACTED] was mentally disordered and a danger to himself and other and therefore justified Officer [REDACTED]'s attempt to detain Mr. [REDACTED] under section 5150.

Use of Deadly Force

The Fourth Amendment prohibition against unreasonable seizures permits law enforcement officers to use only such force to effect an arrest as is 'objectively reasonable' under the circumstances. *Headwaters Forest Defense v. County of Humboldt* (9th Cir. 2002) 276 F.3rd 1125, 1198. The use of force to effect an arrest is evaluated in light of the Fourth Amendment's prohibition on unreasonable seizures. *Graham v. Connor* (1989) 490 U.S. 386. Only that amount of force that is reasonably necessary under the circumstances may be used to effect an arrest, prevent escape, or overcome resistance. *Id.*, at 1125.

Determining whether the force used to effect a particular seizure is "reasonable" under the Fourth Amendment requires a careful balancing of "the nature and quality of the intrusion on the individual's Fourth Amendment interests" against the countervailing governmental interests at stake. *United States v. Place* (1983) 462 U.S. 696, 703. The Fourth Amendment jurisprudence has long recognized that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it. *Terry v. Ohio* (1968) 392 U.S. 1, 22-27. Because "[t]he test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application," *Bell v. Wolfish* (1979) 441 U.S. 520, 559, however, its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight. *Tennessee v. Garner* (1985) 471 U.S. 1, 8-9 (the question is "whether the totality of the circumstances justifie[s] a particular sort of . . . seizure").

With respect to a claim of excessive force, the same standard of reasonableness at the moment applies: "Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers," *Johnson v. Glick* (1973) 481 F. 2d 1028, 1033, violates the Fourth Amendment. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-

second judgments -- in circumstances that are tense, uncertain, and rapidly evolving -- about the amount of force that is necessary in a particular situation. *Graham, supra*, at 397.

As in other Fourth Amendment contexts, however, the “reasonableness” inquiry in an excessive force case is an objective one: the question is whether the officers’ actions are “objectively reasonable” in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. *Scott v. United States* (1978) 436 U.S. 128, 137-139.

In the instant case, given Mr. [REDACTED]’s attempted murder of the officers in violation of California Penal Code section 664/187 and assault with a deadly weapon, in violation of California Penal Code section 245(a)(1), their use of deadly force was entirely reasonable. Where a suspect threatens an officer with a weapon such as a gun or a knife, the officer is justified in using deadly force. *Smith v. City of Hemet*, 394 F. 3d 689, 704 (9th Cir. 2005).

When the officers attempted to place Mr. [REDACTED] on a hold under California Welfare and Institutions Code section 5150, Mr. [REDACTED] came after the officers with a knife two separate times while the officers were well within striking range of the knife. The first time Mr. [REDACTED] attacked the officers with the knife, it was reasonable for Agent [REDACTED] to deploy his Taser in an attempt to subdue the deadly threat. Agent [REDACTED] did not believe the officers could have used OC (pepper) spray due to the confined space because the officers would have been contaminated as well and rendered ineffective. Agent [REDACTED] further stated that using a baton would have required getting closer to the knife Mr. [REDACTED] was trying to strike the officers with. The non-lethal force had no effect on Mr. [REDACTED]. In fact, Sergeant [REDACTED] stated that the Taser made Mr. [REDACTED] more aggressive.

In *City & County of San Francisco v. Sheehan* (2015) 135 S. Ct. 1765, the United States Supreme Court held that officers were justified in using deadly force against a mentally ill person who was advancing on the officers with a knife. *Id.* at 1775. Here, when less than lethal force did not work and Mr. [REDACTED] came after the officers with a knife a second time, Officer [REDACTED] and Officer [REDACTED] reasonably used deadly force to protect their own lives and the lives of the Agent [REDACTED] and Sergeant [REDACTED]. An officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack. *Martinez v. County of L.A.* (1996) 47 Cal. App. 4th 334, 345. In these circumstances, the Courts cannot ask an officer to hold fire in order to ascertain whether the suspect will, in fact, injure or murder the officer. *Id.* at 345. Since Mr. [REDACTED] was within a few feet of the officers, if he had made contact with the knife, he would have seriously injured or killed the officers. Mr. [REDACTED]’s actions gave the officers probable cause to believe that he posed a threat of serious physical harm and was attempting to seriously injure or kill the officers. Under

Garner, it was therefore not constitutionally unreasonable for the officers to use deadly force to protect their lives.

Not only did Officer [REDACTED] and Officer [REDACTED] reasonably use deadly force, they acted in self-defense and defense of others when they shot at Mr. [REDACTED]. "Shooting a man who has told you, in effect, that he is going to use deadly force against you and then moves toward you as if to do so is unquestionably an act of self-defense even if...the man is attempting 'suicide by cop.'" *Plakas v. Drinksi* (1994) 19 F. 3d 1143. Mr. [REDACTED]'s actions leading up to the incident on December 19, 2016 and his actions and statements that day made it clear that he wanted to commit "suicide by cop." His unprovoked attack on the officers with a knife led Officer [REDACTED] and Officer [REDACTED] to shoot Mr. [REDACTED] in self-defense and defense of the other officers present. On multiple occasions prior to the incident, Mr. [REDACTED] had made it known he wanted to attack officers so they would shoot him. Given Mr. [REDACTED]'s history, coupled with his attacking the officers at close range with a knife, the officers had reason to believe that their lives were in imminent danger.

Under California Penal Code section 197, homicide is justifiable when it is committed in self-defense. CALCRIM No. 3470 sets out the elements for self-defense or defense of another: 1) The defendant reasonably believed he or someone else was in imminent danger of being killed or suffering great bodily injury; 2) The defendant reasonably believed that the immediate use of force was necessary to defend against that danger; and 3) The defendant used no more force than was reasonably necessary to defend against that danger. The instruction for self-defense also states that if the defendant previously threatened or harm the victim, that prior conduct can be taken into account when determining whether a defendant's actions were reasonable and justifies the defendant acting more quickly or taking greater self-defense measures against that person.

In the instant case, all of the elements of self-defense are clearly met. First, it was reasonable for Officer [REDACTED] and Officer [REDACTED] to believe that they and the other officers were in imminent danger of being killed or very seriously injured. Mr. [REDACTED] lunged at the officers with a knife multiple times while they were all squeezed into a small bedroom. If Mr. [REDACTED] had been successful, the strike from the knife at close range could have easily killed any one of the officers. Second, it was reasonable for Officer [REDACTED] and Officer [REDACTED] to believe that the immediate use of deadly force was necessary to prevent against the knife attack. Mr. [REDACTED] had already been tazed, to no avail, and was warned to put down the knife, but he still kept coming at the officers with the knife. Since Mr. [REDACTED] came at the officers with deadly force at very close range, it was necessary for Officer [REDACTED] and Officer [REDACTED] to shoot at Mr. [REDACTED] to prevent their own deaths and the deaths of the other officers. Third, Officer [REDACTED] and Officer [REDACTED] had no option other than the use of deadly force to defend against the

knife attack. After less than lethal force was attempted, Mr. [REDACTED] again tried to strike at the officers. Further, given Mr. [REDACTED]'s past threats and actions, it was absolutely reasonable for the officers to believe that Mr. [REDACTED] meant to kill them with the knife in an attempt to commit "suicide by cop" and therefore absolutely necessary for Officer [REDACTED] and Officer [REDACTED] to fire at Mr. [REDACTED].

Conclusion

It appears the officers involved in the December 19, 2016 incident had very little time to react to a very dangerous situation. They were faced with a clearly suicidal subject who had threatened both the officers' and his own safety in the past. Mr. [REDACTED]'s refusal to take anti-psychotic medication, research of "do not resuscitate" orders, and cancelling of medical appointments on the date of the shooting show that his suicidal mindset had not changed. Officers made a lawful entry into the residence to prevent a possible hostage situation or harm to Ms. [REDACTED] and the infant child as well as to prevent self-harm to Mr. [REDACTED]. Mr. [REDACTED]'s repeated attack on the officers with the knife posed an immediate deadly threat and given the totality of the circumstances, the officers' actions and use of force were justified in order to protect human life. Accordingly, the conduct of the officers under these circumstances was lawful.

A copy of this letter, along with the materials submitted for our review will be retained in our files.

Very truly yours,



Gilbert G. Otero
District Attorney